

Managing the Risk –

Law Enforcement Requests & Court Orders

Group Financial Crime Risk

- This presentation is prepared by the author in a personal capacity and does not in any way represent the views of the Hong Kong Monetary Authority, Joint Financial Intelligence Unit, and / or the Department of Justice.

Context: What are we expected as a financial institution?

- The future FCA will be a forward-looking organization that must act preventatively ... **Financial institutions are expected to equip themselves with a well-founded idea of where our financial crime risks really lie. What's more, for big multi-national institutions, they are expected to make sure that all the expertise about geographical and financial crime risk is integrated systemically into our risk analyses.**

*Speech by Bob Ferguson,
Head of Financial Crime & Intelligence, FSA
on 22 June 2011
at FSA Financial Crime Conference, London*

- At any point in time, the authorities may make a legal request or Production Order to provide information to assist their investigations. The Bank must give full and prompt co-operation to all such requests.
- For all Production Orders and requests indicating money laundering or terrorist financing concerns, the Bank will review the accounts **in addition to** complying with the orders / requests.
- Where a decision to exit the relationship has been taken, the timing and consequences of account closure are so managed as to avoid prejudicing any investigation by the relevant authorities. In some jurisdictions, or in the case of some legal requests or Production Orders, the approval of the relevant authorities may be needed before the relationship is exited.

Is it a trigger event for CDD review?

- **HKMA AML Supplement (paragraph 12.3)**
 - **Significant transaction**
 - **Material change in the way the account is operated**
 - **AI's customer documentation standards change substantially**
 - **AI is aware that it lacks sufficient information about the customer**

Or is it a case for an in-depth investigation?

- **HKMA AML Guideline (paragraph 9)**
- **Where an employee of an institution suspects or has reasonable grounds to believe that a customer might have carried on a drug trafficking or might have been engaged in indictable offences ... where the institution holds funds on behalf of such customer, must promptly report it to the Compliance Officer who must promptly evaluate whether there are reasonable grounds for such belief and must then immediately report the case to the JFIU ...**

Why making a disclosure?

- Complying with a court order = or ~~=~~ already meeting reporting obligations???
- Obligation to report where there is knowledge or **suspicion** that property represents the proceeds of drug trafficking or of an indictable offence
- Suspicion is more subjective

Investigation vs. Periodic Account Review

SAR Investigation	Account Review
<ul style="list-style-type: none">■ Identify any red flags, unusual transactions and those not consistent with the customer's profile■ Focus on seeking a satisfactory explanation of the activity / transactions.■ Carefully review the customer (including beneficial owners of corporate customer) based upon information from other sources, e.g. vendor database enquiry to ensure that the customer does not have any derogatory information	<ul style="list-style-type: none">■ Obtain up-to-date and relevant CDD data and documents. <u>Contact with the customer is expected.</u>■ Ensure the risk rating is appropriate having regard to the updated information obtained■ Overall review of transactions during the period under review to ensure that they are consistent with the customer's profile

- **Very limited information revealed in the search warrants / requests. Difficult to know if the account holder is victim or suspect**
- **The Police may not be willing to disclose details if banks approach them**
- **How to identify money laundering related search warrants**

- **Proactively approach the police to get more information**

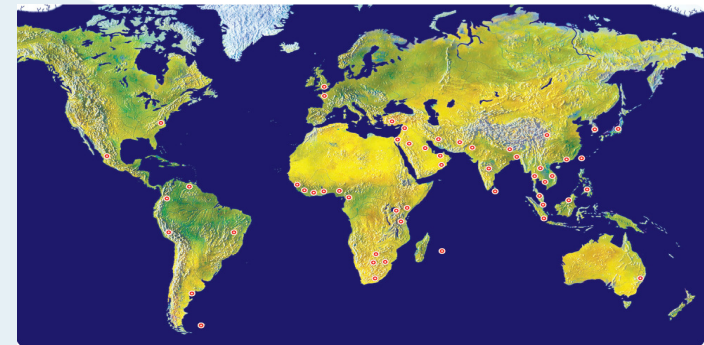
- **Define the scope:-**

Words that may need a further scrutiny include:-

- Section 25 of Drug Trafficking (Recovery of Proceeds) Ordinance;
- Section 25 of Organized and Serious Crime Ordinance;
- Money Laundering;
- Terrorist Financing;
- Handling Stolen Goods;
- Proceeds of Crime / Proceeds of Fraud;
- Gambling; and
- Societies Ordinance.

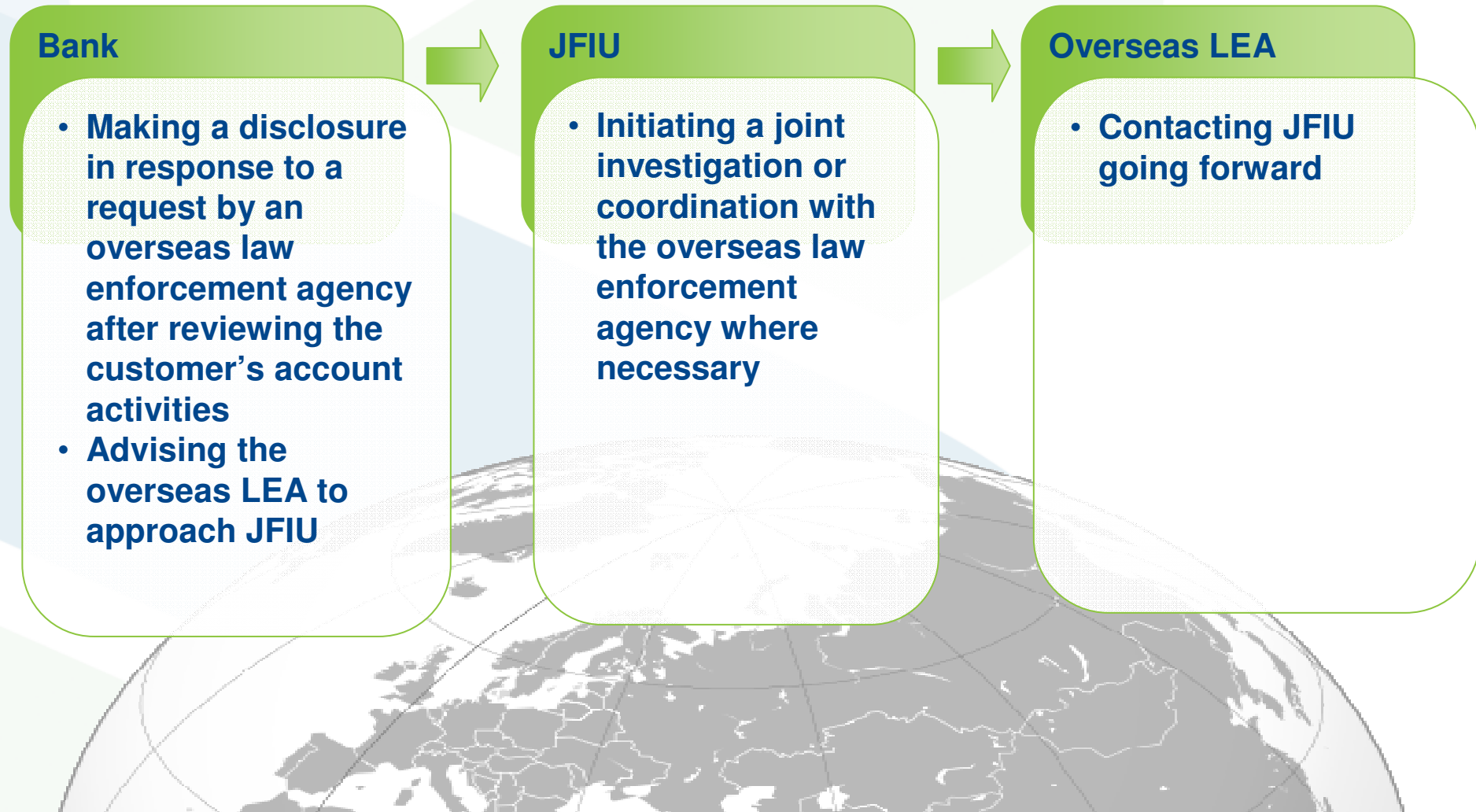
Requests from overseas law enforcement and other governmental bodies

- Banks in Hong Kong are restricted by our laws to divulge the information relating to bank customers directly to external regulators or governmental bodies that have no jurisdiction in Hong Kong
- Banks could still go ahead to carry out an investigation with a view to filing a SAR where appropriate



Overseas Law Enforcement Requests

Tripartite cooperation protocols ...



Local law enforcement requests other than by means of a court order

- **Personal Data (Privacy) Ordinance (“PDPO”) restrictions**
- **Making a disclosure to the JFIU**
- **Resorting to section 58(1) of the PDPO with a caveat?**
For example, *“the information, where personal data are contained, is provided solely for such purpose(s), and under such circumstance(s) as would give rise to an exemption from data protection principle 3 under Part VIII of the PDPO.”* **But the risk rests with the discloser**

Post – SAR action: where transactions involve customers of other Group operations

- The reporting country, to the extent permissible under the local laws, must consider whether Group entities in other countries have been involved in the transactions that have led to the internal report. If Group entities in other countries have been involved, the reporting country must ensure that other relevant offices are aware that a review is under consideration, to the extent possible under local law.

Post – SAR action: where transactions involve customers of other Group operations

- No mention of SAR and thus no tipping off concern
- Merely asking the other country to review the transaction(s) and evaluate whether this matter should be considered a trigger event and therefore, warrants a review and other appropriate action.

Why we care?

- AML is not merely a matter of complying with laws and regulations. This is part of our corporate and social responsibilities by denying money launderers and those involved in terrorist financing access to our banking products and services
- To support governments worldwide in their efforts to combat money laundering
- To take initiative to combat crimes pertinent to money laundering





Thank You

